

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

BEVERLY ANN LAVIGNE)
)
 v.) 1:16-cv-00098-JAW
)
 US TRUSTEE, et al.)

ORDER STRIKING PLAINTIFF'S MOTION FOR JURY TRIAL

On May 26, 2016, Beverly Ann Lavigne moved for a jury trial in this bankruptcy appeal. *Mot. for Trial by Jury* (ECF No. 24). The Court STRIKES Ms. Lavigne's motion. There is no right to a jury trial in a bankruptcy appeal under 28 U.S.C. § 158. The bankruptcy court's factual findings are reviewed for clear error and when its legal conclusions are challenged, the district court must make a de novo review. *See In re Goguen*, 691 F.3d 62, 68 (1st Cir. 2012) (describing First Circuit standard for reviewing decisions of the Bankruptcy Appeals Panel); *Tamir v. United States*, No. 2:15-cv-333-DBH, 2016 U.S. Dist. LEXIS 7748, *4-5 (D. Me. Jan. 22, 2016) (describing the district court's standard for reviewing decisions of the bankruptcy court).

The Court has ruled on this motion despite the fact that Ms. Lavigne has filed a notice of interlocutory appeal to the Court of Appeals for the First Circuit, ECF No. 25, as the merits of the motion do not touch on the merits of the pending appeal. *See Contour Design, Inc. v. Chance Mold Steel Co.*, 649 F.3d 31, 34 (1st Cir. 2011) ("[I]n most respects and absent a stay, further proceedings in the same controversy often may continue in the district court while an [interlocutory] appeal [pursuant to 28

U.S.C. § 1292] in an earlier phase is pending"); *Taylor v. Sterrett*, 640 F.2d 663, 668-69 (5th Cir. 1981) (a district court is divested of jurisdiction on filing of notice of appeal with respect to any matters involved in the appeal; however, where an appeal is allowed from an interlocutory order pursuant to 28 U.S.C. § 1292, the district court may still proceed with the matters not involved in the appeal).

SO ORDERED.

/s/ John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
UNITED STATES DISTRICT JUDGE

Dated this 29th day of June, 2016